

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WILLIE BANKS, Sr., *pro se*,

Plaintiff,

Civil No. 08-367-AC

v.

ORDER

FARMERS INSURANCE COMPANY
OF OREGON,

Defendant.

HAGGERTY, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation [37] that recommended denying plaintiff's Motion for Summary Judgment [18] and granting defendant's Motion for Summary Judgment [22]. Objections [41, 42] to the Findings and Recommendation were filed by plaintiff. The matter was then referred to this court for review.

When a party objects to any portion of a Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Findings and Recommendation. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Defendant filed objections in a timely manner. The court has given the file of this case a *de novo* review. For the following reasons, the objections are overruled.

BACKGROUND

The Magistrate Judge provided a thorough recitation of the relevant facts previously, and these facts need only be summarized here. Plaintiff Willie Banks Sr. (plaintiff or Banks) filed an insurance claim with defendant Farmers Insurance Company of Oregon (defendant or Farmers) on June 30, 2007, asserting that all of his personal property was stolen from his residence. Farmers' subsequent investigation concluded that Banks's property was not stolen, and plaintiff's claim was denied on August 21, 2007. Plaintiff sued Farmers for breach of contract, arguing that Farmers had refused to settle his claim and caused Banks to suffer financially.

ANALYSIS

The Magistrate Judge provided the requisite summary judgment advice mandated by the Ninth Circuit. Subsequently, the Magistrate Judge reasoned that plaintiff's motion for summary judgment fell short of the standards set forth in Federal Rule of Civil Procedure 56. Plaintiff offered no evidence that his claim should be granted as a matter of law. "No evidence, admissible or otherwise, accompanied Banks's motion." Findings and Recommendation 5.

Conversely, Farmers presented substantial admissible evidence regarding the foreclosure of plaintiff's property, that plaintiff was given ample opportunity to claim his personal property, and that he failed to do so. Findings and Recommendation at 5-6 (citations omitted). The Magistrate Judge concluded that plaintiff's assertion that his property was stolen was completely unsupported by admissible evidence, and that plaintiff had failed to present a genuine issue of material fact. Findings and Recommendation at 6.

Plaintiff asserts objections that seek to obtain a stay so that he might retain counsel, and also advance an appeal to the Ninth Circuit. Plaintiff presents no grounds for challenging the Magistrate Judge's well-reasoned Findings and Recommendation. Accordingly, the objections are overruled, and the Findings and Recommendation is adopted. Judgment in this action will be

entered separately, and plaintiff may elect to pursue an appeal of this Judgment within thirty days of the date of this Order. Plaintiff remains free – as he has been throughout his prosecution of his case – to retain counsel for purposes of this litigation, but is advised that the time allowed for filing his appeal is not tolled while he seeks legal representation.

CONCLUSION

The Findings and Recommendation [37] is adopted. Plaintiff's Motion for Summary Judgment [18] is denied, and defendant's Motion for Summary Judgment [22] is granted. Plaintiff's Objections [41, 42] to the Findings and Recommendation are overruled. This action is dismissed with prejudice.

IT IS SO ORDERED.

Dated this 18 day of November, 2009.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge